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IN THE

Supreme Court of the United States

October Term, 1945

No. 990

H. REEVE ANGEL & CO., INC.,
Petitioner,

v.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Customs and Patent Appeals

FREDERICK W. BROOKS
Attorney for Petitioner

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H. REEVE ANGEL & CO., INC.,
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v.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Customs and Patent Appeals

Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Customs and Patent Appeals in *United States* v. *H. Reeve Angel & Co., Inc.*, Customs Appeal No. 4508, entered January 7, 1946, reversing a judgment of the United States Customs Court rendered December 27, 1944.

Opinions Below

The opinion of the trial court (R. 25-36) is reported in C. D. 906, weekly "Treasury Decisions", January 11, 1945, Vol. 80, No. 2, p. 22. The opinion of the Court of Customs and Patent Appeals (R. 38-43) is reported as C. A. D. 324, weekly "Treasury Decisions", February 21, 1946, Vol. 81, No. 8, p. 36.

Jurisdiction

The judgment of the Court below was entered January 7, 1946 (R. 43). This petition is filed under the Rules of this Court pursuant to Section 195 of the Judicial Code as amended (U. S. C., Title 28, Sec. 308) providing that:

> "* * * in any case in which the judgment or decree of the Court of Customs and Patent Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the application of either party, duly made as required by Section 350 of this title, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

The Statutes

Par. 1409. Filtering paper valued at 75 cents or more per pound, 2½ cents per pound and 7½ per centum ad valorem. (Trade Agreement with United Kingdom. Printed in Appendix.)

Par. 1413. Papers and paper board and pulpboard, including cardboard and leatherboard or compress leather, embossed, cut, die-cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms, or cut or shaped for boxes or other articles, plain or printed, but not lithographed, and not specially provided for; * * * (Tariff Act of 1930; 46 Stat. 657, U. S. C. Title 19, Sect. 1001.)

The Trade Agreement with the United Kingdom is published as T. D. 49753, 74 Treasury Decisions 253, which is, in effect, a treaty negotiated by our Department of State with the representatives of the United Kingdom modifying and amending certain of the provisions of the

Tariff Act of 1930 and reducing certain of the duties therein provided on imported merchandise, in accordance with the Act of June 12, 1934 (48 Stat. 943) extended by joint resolution of Congress, approved March 1, 1937 (50 Stat. 24) for the express purpose of expanding our foreign trade. This Trade Agreement and Statute are printed in the Appendix hereto.

Statement

The Collector assessed duty at 30% under par. 1413, *supra,* and the importer filed protest under Section 514, Tariff Act 1930 (46 Stat. 734) claiming the merchandise dutiable at 2½ cents per pound and 7½ per centum ad valorem under the Trade Agreement with the United Kingdom, *supra,* which protest was transmitted to the Customs Court and became the pleading in the suit which is now before this Court (R. 4, 5).

The Customs Court sustained the following contentions of the plaintiff below: (a) the provision in the Trade Agreement is an *eo nomine* designation by use which prevails over a more general descriptive provision; (b) the doctrine of legislative approval of prior judicial construction applies, because in 1911, the Trial Court held similar merchandise dutiable as filtering paper and not as paper cut or stamped into designs or shapes under a similar provision in the Tariff Act of 1909; (c) long-continued Customs practice of classification of this merchandise as filtering paper under the Tariff Acts of 1913, 1922 and 1930 up to March, 1943 at the ports of New York and Chicago; (d) if filtering paper in circles is not dutiable under the *eo nomine* provision in the Trade Agreement, there would be practically no filtering paper dutiable thereunder; (e) if Congress intended that the provision in paragraph 1413 for papers cut into designs or shapes should reach out and invade other paragraphs in the Act,

it would have used more all-inclusive and more explicit language as it did in several other paragraphs of that Act in order to so express its intentions.

The Appellate Court reversed the Trial Court, saying it was conceded that the merchandise is filtering paper valued over 75 cents per pound and the sole question involved, is whether or not the provision for papers cut or stamped into designs or shapes is more specific than the provision of paragraph 1409 for filtering paper and holding that their former decision in *United States* v. *W. X. Huber Co.*, 30 C. C. P. A. 183, which involved tissue paper used for filtering coffee, was *stare decisis* of the issue, although that case did not involve the Trade Agreement with the United Kingdom as it arose before the effective date thereof. The *Huber* case, *supra,* reviewed the legislative history of the provision for papers cut or stamped into designs or shapes and held it more persuasive of the intent of Congress, than other rules of construction discussed in their opinion and in the opinion of the Trial Court. The Appellate Court held the doctrine of legislative approval of prior judicial determination did not apply because the provision judicially construed, was for "paper" cut to shape while the provision in the later Tariff Acts was for "papers" cut to shape and also that the record does not establish long-continued uniform practice in classification of the instant merchandise as the witnesses testified only as to their own experience at the ports of New York and Chicago and the Customs Examiner at New York testified only as to his advisory classification and not as to how the Collector assessed duty.

Question Presented

Is this filtering paper in circles dutiable under the *eo nomine use* designation as filtering paper valued at 75 cents or more per pound in the Trade Agreement with the United Kingdom or under the descriptive provision of

paragraph 1413, Tariff Act of 1930 as papers cut or stamped into designs or shapes?

Reasons for Granting Writ

1. The Trade Agreement with the United Kingdom is, in effect, a treaty for the purpose of expanding foreign trade which contains a specific provision for filtering paper valued at 75 cents or more per pound which was intended to include high grade chemical filter papers chiefly sold by the package, principally obtained from the United Kingdom and limited in value so as to be largely non-competitive with United States production, all of which appears in the official report by the United States Tariff Commission (1938) with respect to products on which concessions were granted by the United States in the said Trade Agreement.

In Volume V of Digests of Trade Data prepared by the United States Tariff Commission with respect to products on which concessions were granted by the United States in the said Trade Agreement with the United Kingdom at pages 14-45 and 14-46 the following information is set forth:

> United States imports
>
> Imports of filter paper range from the cheapest to the highest grade papers. Imports of papers which sell in the domestic market at from 20 to 40 cents per pound come largely from France; these are the so-called industrial papers. The United Kingdom is the principal supplier of high grade or quantitative papers (for quantitative analysis); these papers enjoy considerable prestige in the United States market due to their established reputation for quality and uniformity. High grade filter papers are sold chiefly by the package rather than the pound; on the basis of weight their selling price would be from $2. to $12. or more per pound, according to quality. Imports by principal sources are shown in table 3.

• • •

Competitive conditions

The United States market for high-grade filter papers is supplied almost entirely by imports. This is due to the fine, uniform quality of the imported paper over a long period of years and the disinclination of laboratory technicians to experiment with domestic paper.

The real competition in this country is in the grades of industrial papers produced domestically and imported. Practically all of the filter paper imported from France, Japan and Spain and a part of that imported from Germany and the United Kingdom is of grades competitive with those produced in general in this country. No reductions have been made on these papers. Concessions are limited to paper valued at 75 cents or more per pound, which is largely noncompetitive with United States production.

2. Filtering paper is not imported or used in rolls and although sometimes imported in sheets, it is always cut into circles before use (R. 10, 16). Therefore, since all sheets or circles are paper cut into designs, shapes or other forms, there is no filtering paper which can be classified under the Trade Agreement and the *eo nomine* provision therein, is nullified (R. 11).

If it be argued that sheets of filtering paper may not be dutiable as paper cut into forms, the testimony shows (R. 11) that 1/100 of 1% of filtering paper imported in sheets is valued over 75 cents per pound, and even under that suggestion, the provision in the Trade Agreement is practically nullified.

If filtering paper in sheets is dutiable as paper cut into designs or shapes, many provisions in the Tariff Act of 1930 designating *by name or by use* various papers which are commonly imported and used in sheets, would be nullified, such as ledger, bond and typewriter papers in paragraph 1407.

3. If Congress intended that the provision for papers cut into designs or shapes or other forms should reach out and invade all other paragraphs of the Act and gather within its provisions all paper cut into forms, Congress would have used a more intensified form of expression such as the all-inclusive language of Paragraphs 1529 and 1552 of the Act of 1930 or the proviso to Paragraph 31 of the Act of 1922, which read as follows:

> Par. 1529, Act 1930 (46 Stat. 665) * * * All the foregoing and fabrics and articles wholly or in part thereof, finished or unfinished * * * by whatever name known and to whatever use applied and whether or not named, described or provided for elsewhere in this Act * * *
>
> Par. 1552, Act 1930 (46 Stat. 671) * * * And all smokers' articles whatsoever and parts thereof, finished or unfinished, not specially provided for, of whatever material composed * * *
>
> Par. 31, Act 1922 (42 Stat. 863) * * * Provided, that all such articles (except photographic and moving picture films) whether or not more specifically provided for elsewhere, shall be dutiable under this Paragraph.

In paragraph 1402 of the Act of 1930, Congress has provided for a duty of 10% on paper board, pulpboard, cardboard and leather board or compress leather when not "cut into shapes for boxes or other articles", which materials are also provided for *eo nomine* in paragraph 1413 when "cut, die-cut, or stamped into designs or shapes".

> Par. 1402, Act of 1930 (46 Stat. 653) Paper board, wallboard, and pulpboard, including cardboard, and leather board or compress leather, not plate finished, supercalendered or friction calendered, laminated by means of an adhesive substance, coated, surface stained or dyed, lined or vat-lined, embossed, printed, decorated or ornamented in any manner, *not cut into shapes* for boxes or other articles and not specially

provided for, 10 per centum ad valorem * * * (Italics ours)

It is significant that the provision for filtering paper in the Trade Agreement contains no such limitation that filtering paper shall be "not cut into shapes".

If it was intended that filtering paper cut into circles, squares, rectangles or other shapes should be excluded from the Trade Agreement or from its predecessor paragraph 1409, Tariff Act 1930 (46 Stat. 657), some such words of limitation as "not cut into shapes" would have appeared in the filtering paper provisions.

4. "Filtering paper" is an *eo nomine* designation by *use* which prevails over a descriptive provision such as papers cut into designs or shapes, without special limitation as to use or other qualification. No principle is more firmly established in Customs adjudication.

Fink v. *U. S.*, 170 U. S. 584;
Magone v. *Wiederer*, 159 U. S. 555;
Magone v. *Heller*, 150 U. S. 70;
Cadwalader v. *Wanamaker*, 149 U. S. 532;
Chew Hing Lung v. *Wise*, 176 U. S. 156.

5. The doctrine of legislative approval of prior judicial construction applies because on January 6, 1911 (Abstract 24511, 20 Treasury Decisions 14) the Trial Court held filtering paper in circles dutiable as filtering paper and not as paper cut or stamped into designs or shapes under a similar provision in the Tariff Act of 1909, although the Appellate Court below (R. p. 42) held that the change from the word "paper" in the Act of 1909 to "papers" in the Act of 1930, indicates that the latter includes all papers excepting those specifically excluded, whereas we contend that the word "papers" is no more all-inclusive than the word "paper", just as the plural "men" is no more all-inclusive than the singular "man".

6. The provision for papers, cardboard, etc., cut into designs or shapes under which duty has been assessed, is qualified by the phrase "not specially provided for", which phrase, in effect, directs that articles provided for elsewhere *eo nomine* or by *use*, must be otherwise assessed.

> • • • The presence of the term "not specially provided for" in Par. 256, is of importance because it directs that if an article of wearing apparel is otherwise more specifically provided for, it must be otherwise assessed • • •
>
> *Proctor Co.* v. *U. S.*, 6 Ct. Cust. Appls. 119-120.

> • • • The provision for "cardboard, cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace borders, or other forms," standing alone, we think, *should be restricted to papers or cardboard not specially provided for in other paragraphs.* (Italics ours.)
>
> *Kupfer Bros. Co.* v. *U. S.*, 7 Ct. Cust. Appls. 86, 88.

The Court below in the *Huber* case, *supra*, refused to apply this rule of Customs classification which would, the Court stated, make twenty-five kinds of paper *eo nomine* designated or described in the Tariff Act, not subject to the provisions of Par. 1413. In other words, the Appellate Court below, disregarding its former decisions without distinguishing them, held that papers cut into designs or shapes included papers provided for *eo nomine* or by *use* in other paragraphs of the Tariff Act.

7. The legislative history of the Tariff Act of 1930 shows that the House originally put filtering paper in a paragraph together with blotting paper, and Mr. Child of H. Reeve Angel and Co., the plaintiff herein, and Mr. Newton of the Eaton Dikeman Co., manufacturers of over 75% of the production of filtering papers in this country, appeared before the Committee on Finance of the Senate

on June 13th, 1929 and explained the necessity, as a matter of revenue to the Treasury and of protection to the American manufacturers, of the maintenance of the compound rates of duty rather than the single rate of 30% ad valorem which had been proposed by the House, and Congress in paragraph 1409 of the Act of 1930 restored the same *eo nomine* provision for filtering paper and the same compound rates of duty as were contained in the Tariff Act of 1922.

We append to this brief, for the convenience of the Court, the testimony of Mr. Child of Reeve Angel & Co., the plaintiff herein, and of Mr. Newton, representing the domestic filtering paper interests before the Committee on Finance of the Senate in 1929, from which it conclusively appears that the action of the Senate in restoring the rates and the language of the filtering paper paragraph in the Act of 1922, which later was approved by the Congress and became the Tariff Act of 1930, that filtering paper should be classified under the *eo nomine use* designation therefor and not under any of the other *descriptive* provisions of the Tariff Act, otherwise the action of Congress in striking out the rate of 30% which had been proposed by the House, would have been meaningless. Furthermore, from the description of the uses of filtering paper in this testimony and of the packing thereof in "that little box" mentioned in the testimony of Mr. Newton (Appendix, p. 20) it is clear that *circles* were in mind.

8. If filtering paper in circles is within the *letter* of the provision for paper cut into forms, it is not within the *spirit* thereof and therefore not within the Statute.

In *U. S.* v. *Aetna Explosives Co.* on certiorari, to the U. S. Court of Customs Appeals, the merchandise was nitric acid which was mixed with 20% of sulphuric acid in order to permit shipments in tank cars under rules of the Interstate Commerce Commission.

This Court refused to hold this mixture dutiable as a chemical mixture and affirmed the Court below, which held that although this constituted a mixture in the literal sense, because two chemical substances were mixed, it was not such a mixture as was contemplated by the Statute.

U. S. v. *Aetna Explosives Co.*, 256 U. S. 402.

In that case, the Court below cited with approval, the following rules of construction in Customs cases:

> This is a clear case for the application of the rule that a thing may be within the letter of a statute and yet not within the statute because not within its spirit nor within the intention of its makers. See Church of Holy Trinity v. United States (143 U. S. 457, 459; Heide v. United States (2 Ct. Cust. Appls. 399, 403; T. D. 32166).
>
> • • •
>
> It may be said that the case is not wholly free from doubt. It is well settled that in such case the construction of the statute most favorable to the importer is to be adopted. See Wright & Graham cases (6 Ct. Cust. Appls. 528; T. D. 36147) and cases cited.
>
> *Aetna Explosives Co.* v. *United States*, 9 Ct. Cust. Appls. 298, 306, 307.

Along this same line of thought is the expression of Judge De Vries of the Court of Customs Appeals in construing a similar provision for paper cut into forms or shapes in the Tariff Act of 1909 that a certain construction

> • • • "Renders its application here a matter of accident rather than of intent."
>
> *U. S.* v. *Fuld*, 4 Ct. Cust. Appls. 234, 239.

10. This case involves an important question of Federal Law, a Trade Agreement or Treaty with the United Kingdom and a Tariff Act passed by Congress which affects the rate and amount of Customs duties assessed upon filtering paper at all of the ports of entry in the United States, which should be settled by this Court.

CONCLUSION

This petition for a writ of certiorari should be granted.

FREDERICK W. BROOKS,
Attorney for Petitioner.

March, 1946.

APPENDIX A

Trade Agreement with United Kingdom

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS it is provided in the Tariff Act of 1930 of the Congress of the United States of America, as amended by the Act of June 12, 1934, entitled "An Act to amend the Tariff Act of 1930" (48 Stat. 943), which amending Act was extended by Joint Resolution of Congress, approved March 1, 1937 (50 Stat. 24), as follows:

> Sec. 350. (a) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in the present emergency in restoring the American standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—
>
> (1) To enter into foreign trade agreements with foreign governments or instrumentalities thereof; and

(2) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder. No proclamation shall be made increasing or decreasing by more than 50 per centum any existing rate of duty or transferring any article between the dutiable and free lists. The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported directly, or indirectly; Provided, That the President may suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts or policies which in his opinion tend to defeat the purposes set forth in this section; and the proclaimed duties and other import restrictions shall be in effect from and after such time as is specified in the proclamation. The President may at any time terminate any such proclamation in whole or in part.

WHEREAS I, Franklin D. Roosevelt, President of the United States of America, have found as a fact that certain existing duties and other import restrictions of the United States of America and the United Kingdom of Great Britain and Northern Ireland, Newfoundland, and certain British nonself-governing Colonies Protectorates and Protected States, are unduly burdening and restricting the foreign trade of the United States of America and that the purpose declared in the said Tariff Act of 1930, as amended by the said Act of June 12, 1934, as extended by the said Joint Resolution of Congress, approved March 1, 1937, will be promoted by a foreign trade agreement between the United States of America and

the United Kingdom of Great Britain and Northern Ireland;

* * *

ARTICLE XII

Articles the growth, produce or manufacture of any of the territories to which this Agreement applies on the part of His Majesty the King, enumerated and described in Schedule IV annexed to this agreement, shall, on their importation into the United States of America, from whatever place arriving, be exempt from ordinary customs duties other or higher than those set forth and provided for in the said Schedule IV, subject to the conditions therein set out. The said articles shall also be exempt from all other duties, taxes, fees, charges or exactions of any kind, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of the United States of America in force on the day of the signature of this Agreement.

* * *

SCHEDULE IV

Tariff Act of 1930; Paragraph	Description of Article	Rate of Duty
1409	Filtering paper, valued at 75 cents or more per pound	2½¢ per lb. and 7½% ad val.

APPENDIX B

Tariff Act of 1929

HEARINGS BEFORE A SUB-COMMITTEE OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FIRST CONGRESS FIRST SESSION
ON H. R. 2667

Schedule 14, Papers and Books, June 13 and 14, 1929

FILTER PAPER PAR. 1409

STATEMENT OF ERNEST CHILD, REPRESENTING
H. REEVE ANGEL & CO., NEW YORK CITY

Mr. Child: Mr. Chairman, I appear on behalf of H. Reeve Angel & Co., Inc., New York, in regard to filter paper, paragraph 1409.

We are large distributors of the qualities made in this country, and leading importers of chemically treated papers that are not made here. We strive to import as little as possible. Filter paper is a more important article than it may seem to be. Most technical papers are used in one particular industry, but filter paper is used in almost every industry, the ordinary grades for the filtration of most liquid products, the better grades in the analytical chemical control of practically every industry.

Before the Ways and Means Committee I advocated a reduction in the duty, that would continue to afford the domestic industry ample protection, and at the same time reduce the cost to consumers of the high-priced chemically-treated papers that are not made in this country.

There was no apparent opposition to this request, hence I assume someone suggested that the rate on filter paper be made the same as for blotting paper, without fully realizing the differences between these papers. Blotting paper and the ordinary grades of filter paper are of about the same physical appearance and both absorbent, but in other respects they are totally different.

The present rate on filter paper is 5 cents per pound and 15 percent ad valorem. The Hawley bill changes this to a specific rate of 30 per cent ad valorem. This is the same as the present rate on blotting paper and also the Hawley bill rate.

The duty change gives the domestic producers less protection than at present on the qualities in which they are solely interested, and increases the duty on chemically treated papers.

The chemically treated papers are not made in this country and are not likely to be, because of the limited demand for each of the many qualities, and the expensive equipment and special knowledge required for their manufacture. These papers are used almost exclusively in scientific, industrial, and government control and research work, also in educational laboratories.

The present duty provides a nice revenue on these chemical papers, and also ample protection on the qualities in which domestic industry is interested. I am sure it cannot be the intent of Congress to add a further expense burden to scientific work, and at the same time to so materially weaken the protection afforded domestic industry in the qualities in which they are interested.

Allow me to illustrate. The domestic qualities cost from 12 to 16 cents per pound; papers costing abroad 12 cents a pound, after adding the present duty of 5 cents per pound and 15 per cent ad valorem, cost 19 cents, duty paid. Under the Hawley bill rate of 30 per cent, such

paper would cost 15.6 cents per pound, duty paid, that is, about 3½ cents per pound less than under the present tariff.

The expensive chemical papers cost several dollars per pound. Such papers, selling abroad at say $3 per pound, cost $3.50 duty paid under the present Fordney rate and $3.90 per pound under the proposed Hawley rate. In other words, the Hawley rate is lower on papers costing abroad up to 34 cents per pound and higher for papers costing over 34 cents per pound. The domestic industry has no interest in the last-mentioned papers.

The large users of filter paper to whom I have spoken about this matter hope that the present standardized and harmonious conditions will be allowed to continue; while the chemical profession, who are the users of the expensive chemical papers, hope that their expense burden will not be increased. A higher rate on the imported chemical papers will not create a greater demand for domestic papers as the respective qualities are used for entirely different purposes and are not interchangeable.

For these reasons I hope you will agree that the present Fordney rate of 5 cents per pound and 15 per cent should be maintained, in the interest of the domestic industry and of scientific workers who are the exclusive consumers of the qualities not made in this country.

Senator Thomas: I take it from your statement that you are opposed to the rates provided in the pending bill, and that you favor the existing law, or the rates contained in the existing statute?

Mr. Child: Quite so.

Senator Thomas: Of 5 cents per pound and 15 per cent?

Mr. Child: Quite so.

Appendix B

STATEMENT OF ARTHUR L. NEWTON, REPRESENTING THE EATON DIKEMAN CO., LEE, MASS.

(The witness was duly sworn by the chairman of the subcommittee.)

Senator Deneen: For whom do you appear?

Mr. Newton: For the Eaton Dikeman Co.

Senator Deneen: To which paragraph will you address your testimony?

Mr. Newton: To paragraph 1409.

Senator Deneen: You may proceed.

Mr. Newton: Our company is the largest manufacturer of filter papers in this country; our total tonnage representing over 75 per cent of the domestic production.

During the late war there was created a demand for domestic qualitative or common grades of filter paper, and our company, at great expense for special machinery, knowledge, and time, developed grades of qualitative and industrial filter papers. We have specialized on these papers and extensive improvements have steadily advanced. Filter paper manufacturing requires a much more technical paper-making knowledge than many other papers and it should in no way be classed with blotting paper. While the basic raw material of all high-grade papers is cotton, we cannot class one with another; each must be considered individually and placed in a class by itself.

Our company has no desire or intention of attempting to make what are termed the quantitative filter papers, that is, the chemically treated papers, as our present machinery is not adapted to this paper, and the tonnage used in this country is limited to the extent that it does not interest us.

I would like at this time to make this point perhaps a little clearer. I have here some samples of what is

termed qualitative filter paper (exhibiting samples). If you go into a wholesale drug store and purchase that little box of paper (indicating) you would pay $1.25. The two are made practically from the same base, 100 per cent cotton, and under our own label you buy our paper for 10 cents.

We did not want to make that paper. The foreign importers have 100 per cent of the business in this country; no mill in this country attempts to make this paper. Therefore, we are not arguing over that. That is quantitative, ours is qualitative paper which is not chemically treated. It is hand made. Ours is machine made.

Senator Deneen: When you submit your brief, will you attach exhibits to it, because others will want to see them?

Mr. Newton: Yes, sir; I will be glad to do so. It is not our intention to attempt to manufacture the quantitive filter papers. The present tariff of 5 cents per pound and 15 per cent ad valorem we believe to be a reasonable and just rate of duty. The present rate permits the importation of considerable quantities of filter paper, that is, the qualitative paper, similar to ours, but it has had no material effect on the prices, and permits us to have a reasonable compensation to be paid to our employees to maintain the high standard of living necessary to the welfare of this country.

However, any decrease in the present rate, small as it may be, will tend to encourage greater importation of filter papers that will without doubt cause serious injury to the one single industry in this country that had the courage to manufacture a paper in quality competition with European manufacturers.

Due to the scarcity of raw material in this country, and with prices advancing, there is no possibility of reducing costs to offset any reduction in tariff.

Appendix B

In the past five years we have developed certain industrial filter papers which are used in conjunction with filter press machines. They are expressly used in chemical, oil, varnish, paint, beverage, and water plants. The proposed change to 30 per cent ad valorem would greatly affect these particular grades due to the weight and low value.

For example, one ream of this industrial filter paper of 500 sheets, 20 by 20 inches, weighs 70 pounds. The selling price is 11½ cents per pound, and the value is $8.05. Under present rates on similar paper imported, the amount of this duty is $4.70, and under the proposed change it would be $2.42.

On the higher quality papers we make, with less ream weight, the paper is much lighter. On the heavier papers the basic weights run from 70 to 100 pounds, and on the lighter from 16 to 35 pounds per ream.

On one ream 20 by 20 inches of the 25-pound paper, valued at $5.95, the present rate of duty is $2.64 and the proposed rate is $1.79, with other papers of lighter weight in proportion.

The present importation is, of course, the light-weight papers carrying a higher price than the heavy industrial papers. At the present time we know of no importation of the heavy papers that affect us. While there are some imported papers of heavier weights, they are all hand-made papers, and the prices are in proportion.

With this great reduction, it would enable foreign manufacturers to drive us out entirely. We could not possibly hope to even try to compete with them.

To us, this is a very serious situation and we cannot believe it to be the intention of this Congress to knowingly permit any change in the present duty that would cause such embarrassment to the only domestic filter-paper manufacturer in this country.

Appendix B

Our filter papers represent about one-fourth of our total production tonnage. During the past five years the prices of our filter papers have been greatly reduced, which, it seems to me, proves that the advantage of our present protective tariff has not been abused.

We feel that the proposed change of duty will prove to be very injurious to us, and without presenting and offering specifically the evidence and reports, we respectfully request that no change be made in the Fordney tariff rate on filter papers.

The total tonnage manufactured in this country of qualitative industrial filter papers is such it would not permit even two mills in this country to engage in the manufacture of that paper and realize any profitable business from it.

The total tonnage is 2,000,000 pounds, which includes the heavier industrial as well as the lighter grades, and inasmuch as the foreign importers have 100 per cent of the higher grade papers, we do feel that the present protection should be maintained and allow our own industry, which is practically the only one in this country manufacturing such papers, to have the full protection.

Senator Keyes: Can you give us the reason why this rate was reduced in the House?

Mr. Newton: As I understand it, filter paper has been classed with blotting papers and others, and that whole schedule was changed, and our filter papers got that decrease.

Of course, filter paper in the papers and trade associations is not known because it is such a small quantity that they have not been interested, and it has not become an issue in any trade paper association. In other words, it might be termed, in one sense, "a one-horse business," because there is so little of it. The use of our industrial

papers has been increasing in the past five years; they are being used to such an extent that we hope that in the next five years we will have a greatly increased business in industrial papers.

But when we realize, as we do now, that there is a mill in Canada that is being equipped to make industrial filter papers to be used in the large power plants in Canada, then we can see that if there is a low tariff it will permit Canada to export into our western and central states, and they will be able to obtain a much lower freight rate than we can obtain in Massachusetts.

pp. 107-111

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 990

H. REEVE ANGEL & CO., INC., PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court (R. 25–36) is reported in 80 Treasury Decisions Advance Sheets, January 11, 1945, p. 22. The opinion of the Court of Customs and Patent Appeals (R. 38–43) is reported in 81 Treasury Decisions Advance Sheets, February 21, 1946, p. 36.

JURISDICTION

The judgment of the Court of Customs and Patent Appeals was entered on January 7, 1946 (R. 43). The petition for a writ of certiorari was filed on March 23, 1946. The jurisdiction of

this Court is invoked under Section 195 of the Judicial Code, as amended (28 U. S. C. 308).

QUESTION PRESENTED

Whether certain imported filtering paper, valued at more than 75 cents per pound, which had been cut into disks prior to the time it was imported, is properly classifiable for tariff purposes as "Papers * * * cut * * * into * * * shapes," under paragraph 1413 of the Tariff Act of 1930, with duty at 30 per centum ad valorem, or as "filtering paper" under paragraph 1409 of the said Tariff Act, as modified by the trade agreement entered into between the United States and the United Kingdom, with duty at 2½ cents per pound and 7½ per centum ad valorem.

STATUTE AND TRADE AGREEMENT INVOLVED

The relevant provisions of the Tariff Act of 1930, and the pertinent parts of the trade agreement entered into between the United States and the United Kingdom of Great Britain and Northern Ireland, which became effective on December 24, 1939, are set forth in the Appendix, *infra*, pp. 12–17.

STATEMENT

On July 8, 1943, petitioner imported into the United States at the port of New York certain filtering paper which is chiefly used in chemical laboratories for separating solids from liquids, and which, prior to its importation had been cut

into disks of five and six inches in diameter, respectively (R. 2, 4, 14). The said filtering paper was classified for tariff purposes by the collector of customs at the port of New York as "Papers * * *, cut * * * into shapes," and duty was assessed thereon at 30 per centum ad valorem, under paragraph 1413 of the Tariff Act of 1930, *infra*, p. 13 (R. 4). Petitioner duly filed a protest, contending that the merchandise should have been classified as "filtering paper" with duty at 2½ cents per pound and 7½ per centum ad valorem, under paragraph 1409 of the said Tariff Act, as modified by the corresponding provision of the trade agreement with the United Kingdom, *infra*, pp. 15–17 (R. 4).

The Customs Court sustained the protest, holding that the merchandise was properly classifiable for tariff purposes as "filtering paper," on the ground that the provision for filtering paper in paragraph 1409 is a designation by use, whereas the provision for papers which have been cut into shapes appearing in paragraph 1413, is a designation by description, and that under the established rule of construction applicable to tariff classifications, an *eo nomine* designation by use is more specific than and prevails over a designation by general description. In deciding the case the Customs Court expressly declined to follow the previous holding of the Court of Customs and Patent Appeals in the case of *United States* v.

W. X. Huber Co., 30 C. C. P. A. (Customs) 183, that filtering paper is included in the term "paper(s)" appearing in paragraph 1413, *supra*.

The Court of Customs and Patent Appeals reversed the decision of the Customs Court, stating that it adhered to its prior decision in the case of *United States* v. *W. X. Huber Co., supra,* and that the law as it was announced in that decision was *stare decisis* of the issue in the case at bar. In the *Huber Co.* case, the merchandise involved was disks of filtering paper chiefly used to filter coffee, and the Court of Customs and Patent Appeals, after fully reviewing and discussing the legislative history of the pertinent provisions of the Tariff Act of 1930 and the prototype provisions of preceding tariff acts, reached the conclusion that the Congress, when enacting the Tariff Act of 1930, intended to include filtering paper in the term "paper(s)" as used in paragraph 1413 thereof.

ARGUMENT

1. Petitioner's contention that the paper disks should be classified as filtering paper under the trade agreement appears to be based, at least in part, on the postulate that the basic term "filtering paper" as used in the trade agreement has a meaning independent of and broader than the meaning of that term as it is used in paragraph 1409 of the Tariff Act of 1930. After stating that the trade agreement is, in effect, a

treaty, petitioner quotes several statements concerning filtering paper appearing in the Digests of Trade Data prepared by the United States Tariff Commission, apparently to show the meaning of the term through the history of the agreement (Pet. 5–6), and then states that because filtering paper, although sometimes imported in sheets, is always cut into circles before it is used, the trade agreement provision is rendered nugatory if filtering paper in circle form is excluded therefrom (Pet. 6). Finally, petitioner states that if it had been intended to exclude filtering paper in circle form from the trade agreement, express language to that effect would have been included in the agreement (Pet. 8). Thus, the reasoning advanced by petitioner assumes that filtering paper cut into disks may be construed to be within the purview of the trade agreement whether or not such paper is included in paragraph 1409 of the Tariff Act.

Petitioner's assumption is patently erroneous. If filtering paper cut into disks is not within the purview of paragraph 1409 of the Tariff Act, such paper is not included in the trade agreement, as is evidenced by the express language of the agreement. The note to Schedule IV of the agreement, *infra*, p. 16, expressly states that the provisions of that schedule shall be construed and given the same effect as if they appeared in the corresponding statutory provisions. In

this case the corresponding statutory provision is paragraph 1409 of the Tariff Act of 1930. Accordingly, if filtering paper cut into disks could not be properly classified under paragraph 1409, it cannot be classified as filtering paper under item 1409 of the trade agreement. See also *United States* v. *Canadian National Railways*, 29 C. C. P. A. (Customs) 272, 278. Furthermore, petitioner's assumption is erroneous on even more vital grounds.

It will be observed that Section 350 of the Tariff Act of 1930, as amended, *infra*, pp. 14–15 (sometimes known as the Reciprocal Trade Agreement Act of 1934), which was in force at the time the trade agreement with the United Kingdom was made, prohibited, at that time, the increasing or decreasing of any existing rate of duty by more than 50 per centum. Thus, if filtering paper cut into disks is properly classifiable under paragraph 1413 of the Tariff Act, with duty at 30 per centum ad volorem, the rate of duty thereon could not have been legally reduced below 15 per centum ad valorem by the trade agreement. It is obvious that a duty of 2½ cents per pound and 7½ per centum ad valorem on filtering paper valued at 75 cents per pound would be less than 15 per centum ad valorem, and would, therefore, be a reduction in the rate of duty of more than 50 per centum, which was expressly prohibited by the law of the United States. Con-

sequently, the term "filtering paper", as used in the trade agreement, must be given the same meaning, with the exception of the minimum value of 75 cents or more per pound which is conceded in this case, that it has in paragraph 1409 of the Tariff Act. A determination of the meaning of the term can be found, therefore, only from a construction of the pertinent provisions of the Tariff Act of 1930. Plainly then, the case is not one calling for the construction of the terms of a treaty made with a foreign government, but is one which is limited to a problem of statutory construction, *i. e.*, a determination of the proper classification of merchandise under the Tariff Act of 1930.[1]

2. In holding that filtering paper cut into disks is properly classifiable under paragraph 1413 of the Tariff Act of 1930, rather than under paragraph 1409 of that Act, the court below adhered to the dominant rule to be followed in the construction of statutes, *i. e.*, that the intention of

[1] Although we do not concede that it has any relevance to this case, we have been advised that the British Government has expressed its dissatisfaction to our Government with the decision of the court below, on the ground that it nullifies the concession on filtering paper granted to the United Kingdom in the trade agreement. However, the note to Schedule IV of the agreement states that the provisions of that schedule shall be construed as if they appeared in the respective provissions of the Tariff Act, and there is nothing in the agreement that prohibits the application of judicial decisions which require a change in the classification of merchandise.

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the legislature must prevail. Hence, it committed no error in declining to apply the rule of construction for which petitioner contends, that in construing competing provisions of tariff legislation an *eo nomine* designation by use is controlling over a designation by description. The latter rule is undoubtedly a sound one in its proper sphere, but, like other technical rules of construction, it is merely an aid for ascertaining legislative intention, and will not be applied in a particular case if the legislative intent is shown by other and better evidence to be contrary to the apparent intent indicated by the rule. *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. (Customs) 285, 288. Technical rules of construction must yield to the will of the legislature. *S. E. C.* v. *Joiner Corp.*, 320 U. S. 344, 350–351; *United States* v. *Freeman*, 3 How. 556, 565.

In the case at bar the court below in declining to apply the rule of construction contended for by petitioner, based its decision on its previous ruling in the case of *United States* v. *W. X. Huber Co., supra,* also involving the classification of filtering paper under paragraph 1413 of the Tariff Act of 1930. In the *Huber Co.* case the court, after making an exhaustive review of the legislative history of the provision of the successive tariff acts covering paper which has been cut into shapes, reached the conclusion that the Congress when enacting the Tariff Act of 1930, intended to include filtering paper in the provision in para-

graph 1413 for papers cut into shapes, when such filtering paper has been cut into the shapes provided for therein. In its review of the legislative history, the court found that the provision for paper cut into shapes first appeared in paragraph 415 of the Tariff Act of 1909 (36 Stat. 11, 63) and that at the time the bill which later became that Act, was under consideration the Congress had before it the "Notes on Tariff Revision," 1909, which directed attention (p. 529) to the decision in *Murphy* v. *United States,* 148 Fed. 336, holding that filtering paper cut into disks remained filtering paper notwithstanding, and in which it was stated that a paragraph amended to meet those conditions was submitted. The court found that although the suggested amendment did not appear in the volume, the reference was to the new paragraph 415 which became the original provision for papers cut into shapes. It then referred to its decision in *Knauth, Nachod & Kuhne* v. *United States,* 3 Ct. Cust. Appls. 183, in which it held that under the new provision in paragraph 415 of the Tariff Act of 1909, paper which had been printed and cut into shapes fell within the provision for "paper cut into shapes" rather than under the provision for "printed matter," and distinguished its apparently contrary decision in the case of *Kupfer Bros. Co.* v. *United States,* 7 Ct. Cust. Appls. 86, pointing out that the language of the corresponding tariff provision then in effect (Paragraph 332 of the Tariff Act of

1913, 38 Stat. 114, 146), had been materially modified by the deletion of some of the original words. Finally, it observed that the deleted language had been restored in paragraph 1313 of the Tariff Act of 1922 (42 Stat. 858, 912), and retained in paragraph 1413 of the presently effective Tariff Act of 1930.

The conclusion reached by the court below in the *Huber Co.* case, *supra,* on the intention of the legislature, which was the basis for its decision in the case at bar, is sound, since it is reasonable to assume from the definite information which the Congress had before it that the inclusion of the pertinent language in paragraph 415 of the 1909 Act was done for the purpose of overcoming the effect of the decision in the *Murphy* case, *supra.* And there was no occasion for the court below to follow petitioner's contention that there had been a legislative approval of judicial determination because of the decision of the Board of General Appraisers in Abstract 24511, 20 Treasury Decisions 14, since the word "paper" appearing in the singular in the 1909 Act now appears in the plural in the 1930 Act, which could well be a sufficient change to overcome the decision in Abstract 24511, *supra.* Furthermore, there is nothing in Abstract 24511 to show that paragraph 415 of the 1909 Act was even considered in that case.

The court below was also correct in rejecting the petitioner's contention that there was a long-

continued uniform administrative practice in classifying paper like that in the case at bar as filtering paper, since the witnesses testified only as to their own experience with respect to merchandise classified in New York and Chicago. The court below has long held that evidence of that character is insufficient to show uniform administrative practice. *United States* v. *Mills & Gibb,* 8 Ct. Cust. Appls. 422, 426.

CONCLUSION

The decision below is correct. There is no conflict of decisions, and the question presented is not of large public importance. It is therefore respectfully submitted that the petition should be denied.

J. HOWARD MCGRATH,
Solicitor General.
PAUL P. RAO,
Assistant Attorney General.
JOHN R. BENNEY,
Attorney.
JOSEPH F. DONOHUE,
SYBIL PHILLIPS,
Special Attorneys.

APRIL 1946.

APPENDIX

TARIFF ACT OF 1930

(46 Stat. 590, 653, 656, 657)

SECTION 1. That on and after the day following the passage of this Act, except as otherwise specially provided for in this Act, there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam) the rates of duty which are prescribed by the schedules and paragraphs of the dutiable list of this title, namely:

* * * * *

SCHEDULE 14.—PAPERS AND BOOKS

* * * * *

PAR. 1409. Jacquard designs on ruled paper, or cut on Jacquard cards, and parts of such designs, 35 per centum ad valorem; hanging paper, not printed, lithographed, dyed, or colored, 10 per centum ad valorem; printed, lithographed, dyed, or colored, 1½ cents per pound and 20 per centum ad valorem; wrapping paper not specially provided for, 30 per centum ad valorem; blotting paper, 30 per centum ad valorem; filtering paper, 5 cents per pound and 15 per centum ad valorem; paper commonly or commercially known as cover paper, plain, uncoated, and undecorated, 30 per centum ad valorem; paper not specially provided for, 30 per centum ad valorem.

* * * * *

PAR. 1413. Papers and paper board and pulpboard, including cardboard and leatherboard or compress leather, embossed, cut, diecut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms, or cut or shaped for boxes or other articles, plain or printed, but not lithographed, and not specially provided for; paper board and pulpboard, including cardboard and leatherboard or compress leather, plate finished, super-calendered or friction calendered, laminated by means of an adhesive substance, coated, surface stained or dyed, lined or vat-lined, embossed, printed, or decorated or ornamented in any manner; press boards and press paper, all the foregoing, 30 per centum ad valorem; test or container boards of a bursting strength above sixty pounds per square inch by the Mullen or the Webb test, 20 per centum ad valorem; stereotype-matrix mat or board, 35 per centum ad valorem; wall pockets, composed wholly or in chief value of paper, papier-mâché or paper board, whether or not die-cut, embossed, or printed lithographically or otherwise; boxes, composed wholly or in chief value of paper, papier-mâché or paper board, and not specially provided for; manufactures of paper, or of which paper is the component material of chief value, not specially provided for, all the foregoing, 35 per centum ad valorem; tubes wholly or in chief value of paper, commonly used for holding yarn or thread, if parallel, 1 cent per pound and 25 per centum ad valorem; if tapered, 3 cents per pound and 35 per centum ad valorem.

* * * * *

TARIFF ACT OF 1930

As amended by the Act of June 12, 1934 (48 Stat. 943–944)

SEC. 350. (a) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in the present emergency in restoring the American standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(1) To enter into foreign trade agreements with foreign governments or instrumentalities thereof; and

(2) To proclaim such modifications of existing duties and other import restrictions, or such addi-

tional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder. No proclamation shall be made increasing or decreasing by more than 50 per centum any existing rate of duty or transferring any article between the dutiable and free lists. The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported directly, or indirectly: *Provided,* That the President may suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts or policies which in his opinion tend to defeat the purposes set forth in this section; and the proclaimed duties and other import restrictions shall be in effect from and after such time as is specified in the proclamation. The President may at any time terminate any such proclamation in whole or in part.

* * * * *

TRADE AGREEMENT—UNITED KINGDOM

Effective December 24, 1939

(54 Stat. (Pt. 2) 1897, 1902, 1954, 1976)

* * * * *

ARTICLE XII

Articles the growth, produce or manufacture of any of the territories to which this Agreement applies on the part of His Majesty the King,

enumerated and described in Schedule IV annexed to this Agreement, shall, on their importation into the United States of America, from whatever place arriving, be exempt from ordinary customs duties other or higher than those set forth and provided for in the said Schedule IV, subject to the conditions therein set out. The said articles shall also be exempt from all other duties, taxes, fees, charges or exactions of any kind, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under the laws of the United States of America in force on the day of the signature of this Agreement.

* * * * *

SCHEDULE IV

NOTE: The provisions of this Schedule shall be construed and given the same effect, and the application of collateral provisions of the customs laws of the United States to the provisions of this Schedule shall be determined, insofar as may be practicable, as if each provision of this Schedule appeared respectively in the statutory provision noted in the column at the left of the respective descriptions of articles.

* * * * *

United States Tariff Act of 1930 Paragraph	Description of Article	Rate of Duty
1409	Filtering paper, valued at 75 cents or more per pound	2½¢ per lb. and 7½% ad val.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1948